

## FCC MAIL SECTION

Before the  
Federal Communications Commission  
JUL 26 1993 Washington, D.C. 20554

DISPATCHED BY MM Docket No. 92-120

In the Matter of

Amendment of Section 73.202(b). RM-7968  
Table of Allotments,  
FM Broadcast Stations.  
(Hartford, Vermont)

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: June 29, 1993;

Released: July 21, 1993

By the Chief, Allocations Branch:

1. At the request of Family Broadcasting, Inc. ("petitioner"), permittee of Station WGLV-FM, Channel 282A, Hartford, Vermont, the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 3245 (1992) ("*Notice*") proposing the substitution of Channel 282C3 for Channel 282A at Hartford and modification of Station WGLV-FM's authorization on the higher class channel. Petitioner filed comments reiterating its intention to apply for Channel 282C3 and an engineering statement.<sup>1</sup> No other comments were received.

2. The *Notice* stated that Channel 282C3 could be allotted at petitioner's specified site in compliance with the minimum distance separation requirements of the Commission's Rules. However, we questioned, given the terrain obstructions found by our engineering staff, whether petitioner's proposal would comply with the principal city coverage requirements. Therefore, petitioner was requested to provide information in its comments to establish a *prima facie* showing of its ability to comply with the requirements of Section 73.315 of the Commission's Rules.

3. In response, petitioner states that its referenced coordinates are an "assumed site" and from that site its proposal meets both the minimum mileage separation requirements and the requirements of Section 73.315 the Commission's Rules. Although the Commission indicated that the petitioner would have to use unconventional Class C3 facilities

at its proposed site to implement its upgrade at Hartford, petitioner argues that it is Commission policy not to evaluate specific terrain data in allotment proceedings, citing *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988) ("*Woodstock*").<sup>2</sup> Nevertheless, petitioner agrees with the Commission's analysis that from its "assumed site" there are terrain obstacles which prevent line-of-sight into Hartford using "realistic" tower heights. However, petitioner contends that it reserves the right to assess available tower sites at the time of the submission of its application for construction permit. Petitioner notes that there is a "plethora of sites" on which it could locate a tower and it would be waste of time, energy, and money to require petitioner to perform extensive viability studies on a tower at an arbitrary site. Finally, petitioner submits it is willing to expend the resources to find a site, secure FAA and local approval, and perform propagation studies when it submits its application to upgrade its facilities at Hartford.

4. After reviewing the pleadings before us, we find that Channel 282C3 cannot be allotted to Hartford in compliance with the Commission's technical requirements. At the allotment stage the Commission requires that a theoretical site exists from which a station can be operated in compliance with our rules.<sup>3</sup> Ordinarily, the Commission's concerns at the allotment stage do not require detailed showings concerning the availability and suitability of a specific site. Rather, we require a showing demonstrating only that such an area does exist.<sup>4</sup> However, in some cases, additional information may be required before an allotment can be made. In this case, our engineering analysis revealed that from the site specified by petitioner, it would be necessary to employ unconventional Class C3 facilities in order to provide the requisite city-grade coverage to Hartford. In response to our request for additional information, petitioner states its proposal does not fit the *Woodstock* exception since it has not secured a specific site. In addition, petitioner states that "it would be both unnecessarily expensive... to attempt to secure a site within the allocation area, because that would unnecessarily limit [petitioner's] freedom to obtain the best available site at the time the application is filed." We find petitioner has failed to provide any data to address our concerns regarding city-grade coverage to Hartford. Rather, it merely states that "there are a large number of potential transmitter sites for a broadcast station within any proposed allocation area." Therefore, we are compelled to deny petitioner's proposal since no particular site, taking into account terrain considerations, has been explored and no specific showing demonstrating the ability to provide a clear line-of-sight service has been provided. To do otherwise would result in the allotment of a substandard channel.<sup>5</sup>

<sup>1</sup> We note petitioner's engineering statement was late filed and was not accompanied by a motion to accept. Nevertheless, we will accept the statement in the interest of compiling a complete record in this proceeding. In addition, petitioner filed an "Engineering Statement" supplement prior to the issuance of the *Notice* in this proceeding. In that statement, petitioner acknowledges that a 550 meter tower would have to be erected in order for the proposed antenna to provide line-of-sight service to the entire community of Hartford. Petitioner notes a tower of this height will require great care in the selection of a site, and petitioner's specified site may not be the best for overcoming shadowing concerns.

<sup>2</sup> In *Woodstock*, the Commission set forth a limited exception

to its allotment policy of predicting city-grade coverage based upon an assumption of uniform terrain rather than an analysis of the terrain characteristics of specific radials. This exception applies only to existing stations, such as petitioner's, where the allotment will not be opened up for competing applications.

<sup>3</sup> See e.g., *West Palm Beach, Florida*, 3 FCC Rcd 5810 (1988), *recon. denied*, 6 FCC Rcd 6975 (1991), *Stamping Ground, Kentucky*, 5 FCC Rcd 1772 (1990).

<sup>4</sup> See *Key West, Florida*, 3 FCC Rcd 6423 (1988).

<sup>5</sup> See *Brownsville, Newport, Oakridge, and Reedsport, Oregon*, 3 FCC Rcd 3968 (1988); and *Wilmington, Burgaw, Hamlet, Rockingham, and Laurel Hill, North Carolina; Norfolk-Portsmouth-Newport News-Hampton, Virginia*, 6 FCC Rcd 6969 (1991).

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That the petition filed by Family Broadcasting, Inc. (RM-7968) IS DENIED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau